

OPEN RECORDS

Generally. This policy is established pursuant to § 24-72-203(1), C.R.S., to ensure that requests for inspection of public documents are properly fulfilled, that confidential or non-public information is protected, and that honest and frank discussion within government is not stifled. The procedures in this policy are subject to interpretation by the Department, and exceptions may be made in individual cases at the discretion of the Executive Director or Deputy Executive Director.

Requests. Records include documents, recordings, maps, photographs, e-mail, computer disks, and similar items. Except as otherwise provided in this policy or as approved by the DPA Public Information Officer (PIO), an employee who receives a request for records must immediately refer it to his or her division director and the PIO. An employee who receives a request over the phone must inform the requestor that requests must be made in writing to the PIO and must specifically describe the documents requested, to ensure that requests are accurately fulfilled and comply with state law. Employees shall not estimate or predict the availability of records or speculate about the contents of records.

No employee shall deviate from the normal course of business or intentionally delay opening correspondence because he or she anticipates that the correspondence contains a records request. Employees shall note the time at which requests are received in the ordinary course of business:

- An e-mail is received when it is viewed by the recipient.
- A letter is received when it is stamped in or its seal is broken.
- A fax is received when it is printed during regular business hours, or if received after hours, at 8:00 AM on the following business day.

Responses. The PIO will notify and coordinate with any other potentially affected agencies as appropriate. The PIO will set a date and time when the records will be available for inspection within three business days of the request. The Department may extend this period upon written findings of extenuating circumstances as described in § 24-72-203(3)(b), C.R.S. The PIO may ask a requestor to clarify a records request. An employee shall not allow the inspection of records nor create new documents in response to a request, without the approval of the PIO. And in no event shall an employee destroy or modify a requested record, although confidential or non-public information may be redacted. It is a

misdemeanor to willfully and knowingly violate the Colorado Open Records Act or to knowingly make a false entry or falsely alter an official book, paper, or record. See § 24-72-206, C.R.S. and § 18-8-114, C.R.S.

Not in Custody of the Department. The PIO shall notify a requestor if a requested record is not in the custody of the Department and provide, to the extent possible, the location of the requested record.

Not Subject to Inspection. If the requested record is in the custody or control of the Department, agency staff and the PIO shall review it to ensure that confidential or non-public information is protected. Inspection of records shall not occur when it is prohibited by statute, regulation, an order of a court of record or the order of an administrative law judge. If a record is either not a “public record” or is not open to inspection, the PIO shall immediately notify the requestor. In addition, the following types of records receive special treatment under the Open Records Act:

- Letters of reference
- Personnel files
- Confidential personally identifiable information as described in the Department’s privacy and confidentiality policy, such as home addresses, telephone numbers, financial information, social security numbers, medical information, and similar information obtained through the employment relationship or otherwise collected, stored, transferred, or used in the ordinary course of business.
- Test questions, scoring keys, and other similar employment or licensing examination information
- Attorney-client communications
- Investigatory files for law enforcement purposes
- Criminal justice records
- Elected official memos and correspondence
- Deliberative materials
- Records of sexual harassment
- Confidential commercial or financial information, including trade secrets
- Real estate appraisals

Readily Available. If a requested record is in the custody and control of the Department, is a “public record” and is open to inspection, the PIO will

immediately schedule a time at which the requestor may inspect the record. When a record is not open to public inspection a party, an attorney for a party or the attorney's employee may inspect and copy their own case file upon presenting adequate proof of authority and identification.

Not Readily Available. If a requested record is in the custody and control of the Department, is a “public record” and is open to inspection, but is in active use, in storage, or otherwise not readily available, the PIO will immediately notify the requestor in writing.

Production. The PIO shall confirm whether the requestor wishes to receive copies, and advise the requestor of the amount of the fee which must be paid in advance, before any copies are made. The fee for paper copies is \$1.00 per page, and if staff must supervise the production of copies, printout, or photographs, an additional fee of \$1.00 per page shall be charged. Electronic or printed copies of electronic records may be provided at a cost based on recovery of the actual incremental costs of providing the electronic services and products together with a reasonable portion of the cost associated with building and maintaining the information system. The Executive Director or Deputy Executive Director may waive any fee, and may authorize a separate fee schedule for the State Archives pursuant to § 24-80-102, C.R.S. All checks should be made payable to “DPA.”

Frequently Requested Material. The Executive Director or Deputy Executive Director may grant exceptions to this policy for frequently requested materials which a division director may produce without prior approval, such as individuals’ reviews of their own administrative hearing case files or procurement files.